

So Ordered.



Patricia C Williams

**Patricia C. Williams
Bankruptcy Judge**

Dated: March 28th, 2013

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

10 In re: }
11 LLS AMERICA, LLC, } No. 09-06194-PCW11
12 Debtor. }

13 BRUCE P. KRIEGMAN, solely in
14 his capacity as court-appointed
15 Chapter 11 Trustee for LLS America,
LLC.

No. 09-06194-PCW11

16 Plaintiff,

Adv. No. 11-80093-PCW11

17 | VS.

18 || PAUL COOPER, et al.,

**MEMORANDUM DECISION RE:
PLAINTIFF'S MOTIONS TO COMPEL
DISCOVERY CONCERNING
DEFENDANTS ANGELA MIRROW,
ALEX MIRROW AND SAVE IT, LLC
(ECF NOS. 254, 256 and 258)**

• 100 •

22 The purpose of this decision is to resolve and provide guidance to the parties
23 concerning plaintiff's Motions to Compel Discovery (ECF Nos. 254, 256 and 258)
24 compelling defendants Angela Mirrow, Alex Mirrow and Save It, LLC (hereinafter
25 "named defendants") to answer discovery and to resolve said motions. As there are
26 numerous related adversary proceedings brought by the same plaintiff in which similar
27 discovery issues may arise, this memorandum decision should also be of guidance in
28 those adversaries.

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As the named defendants did not appear at the hearing on March 25, 2013, no explanation has been provided justifying the failure to respond to many interrogatories and requests for production. Nor has any explanation been provided supporting the basis for the numerous objections to the same.

FACTS

The interrogatories were initially served December 19, 2012, with the responses received January 23, 2013. Plaintiff's motions to compel discovery were filed February 22, 2013 (ECF Nos. 254, 256 and 258). Counsel for the named defendants filed a motion to withdraw on January 4, 2013 (ECF No. 242), which was granted, thus the named defendants and several other defendants in the related adversaries are apparently unrepresented at this time. However, the standards concerning compliance with discovery rules are applicable to both unrepresented parties and those that are represented by counsel.

Based solely upon a review of the responses to the interrogatories and requests to produce, it appears likely that the responses were not formulated in good faith. Although a few of the objections are well taken, overall the responses ignore the spirit of discovery as well as the rules regarding discovery. The objection, which is based upon the lack of any temporal limits, is well taken. Plaintiff must amend or supplement the discovery to provide a temporal limit.

20 Not a single document was produced in response to 23 document requests. There
21 is simply no response of any kind to many of the interrogatories. Most of the objections
22 to the interrogatories are ill founded and/or spurious. For example, Interrogatory No. 1
23 requests the full name, residential address, and date of birth of the named defendants. No
24 information is provided due to the objection that the information sought is not relevant.
25 It is difficult to imagine a lawsuit where the full legal name of the defendant is
26 irrelevant. In this and other related adversaries, the defendants have raised issues of
27 insufficiency of service of process and jurisdiction, which certainly render a request for
28 information as to residence relevant. As to the request for the date of birth of the named

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1 defendants (or date of formation and primary place of business for a corporate
2 defendant) that information too may be relevant.

3 The preliminary conclusion is that each named defendant should be sanctioned
4 \$500 payable to counsel for the plaintiff as partial compensation to plaintiff of the costs
5 of proceeding with the motion to compel.

6 Should a named defendant believe that sanction is inappropriate, an explanation
7 regarding the failure to respond to many of the interrogatories and requests to produce
8 must be provided and filed by no later than **April 15, 2013**, together with a motion to
9 reconsider. Should such motion be filed, it is the moving party's duty to contact the court
10 to schedule a hearing.

11 **REQUIREMENTS IN GENERAL**

12 1. Each question or request to produce which contains the word "invest" is
13 objected to on the basis that the term is vague and ambiguous. Plaintiff defined the term
14 at paragraph 20, which definition is adequate to formulate a response by the named
15 defendants. This objection is not well-founded and appears to be an attempt to avoid
16 discovery goals.

17 2. An objection is made to any questions and requests to produce which
18 contain the term "financial statement" on the basis that the term is vague or ambiguous.
19 The term is commonly used not only in the business world, but also in consumer
20 transactions and has a commonly understood meaning. The term is not vague. The
21 objection is overruled. However, to assist defendants, the named defendants are advised
22 that the term refers to documents (the plaintiff has included electronic information in the
23 definition of "documents"), which contain information regarding assets and liabilities,
24 and/or income and expenses and/or profit and loss.

25 3. There are several interrogatories and requests regarding expert witnesses.
26 The named defendants have not responded. If no experts have been retained, the named
27 defendants should so state. As to experts on common issues, if these named defendants
28 are relying upon the experts previously identified for the summary judgment hearing

1 regarding common issues as described in the Amended Case Schedule Order Re
2 Common Issues (ECF No. 214) in adversary proceeding No. 11-80299-PCW11, the
3 named defendants should so state. The named defendants are also directed to review the
4 Amended Case Schedule Order Re Non-Common Issues (ECF No. 219) in adversary
5 proceeding No. 11-80299-PCW11, which is applicable in this adversary. The Amended
6 Case Schedule Order Re Common Issues (ECF No. 214) requires experts regarding
7 common issues to be made available for depositions by May 31, 2013. The Amended
8 Case Schedule Order Re Non-Common Issues (ECF No. 219) requires all experts
9 regarding non-common issues to be identified and Rule 26 materials exchanged by
10 June 20, 2013, with all discovery completed by July 15, 2013.

11 Parties responding to discovery are specifically required by Fed. R. Bankr. P.
12 7026(e) to supplement ALL responses to interrogatories, should information be
13 discovered which renders the prior answer incorrect or misleading. As to experts, if and
14 when the named defendants identify experts, the named defendants must promptly
15 supplement the interrogatories and requests with the appropriate information.

16 4. Defendants must comply with the requests to produce documents. Fed. R.
17 Bankr. P. 7034 requires that defendants identify each document as being produced in
18 response to a particular request and provide an index of the documents produced. Again,
19 the named defendants are reminded that the definition of "document" includes electronic
20 documents, which are addressed in Fed. R. Bankr. P. 7034(E).

21 5. Some objections refer to a "privilege" as excusing production of documents
22 or communications. The response must be amended to state the nature of the privilege,
23 i.e., attorney-client, spousal, etc. A privilege log is required to be produced for the
24 response, which must include the nature of the item not produced, the date and identity
25 of the person other than defendant involved in the communication, i.e., spouse, attorney,
26 etc. The log must be indexed.

27 **6. Failure to participate and respond to discovery as required in this
28 order or Fed. R. Civ. P. 26 may result in sanctions, which may include directing**

1 **that certain facts are established for purposes of the action, prohibiting certain**
2 **claims or defenses, striking pleadings and awarding fees and expenses for delay.**
3 **Fed. R. Bankr. P. 7037; Fed. R. Civ. P. 37(b)(2)(A)(i)-(iv), (c).**

4 **SPECIFIC INTERROGATORIES AND REQUESTS FOR PRODUCTION**

5 A response must be made to each interrogatory and request to produce. Even
6 though a particular interrogatory or request to produce is not specifically identified in
7 this decision, a full and complete response must be made and any objection set forth. By
8 responding, the named defendants are not waiving any such objection. If the named
9 defendants have already provided the requested information or documents, the named
10 defendants must indicate the date which the information was provided and to whom and
11 how it was provided, i.e., attachment to a proof of claim, an e-mail to counsel, etc. The
12 named defendants are cautioned that although some of the requested information may
13 have been provided previously, it may not have been as specific or as complete as is
14 requested. Because these named defendants are not now represented by counsel, and the
15 level of financial sophistication is unknown, plaintiff may, at its option, choose to clarify
16 any interrogatories or requests to produce, but is only required to do so as specifically
17 required herein.

18 Interrogatory No. 3 - Plaintiff must clarify that this interrogatory and others
19 referring to "claims and defenses," is limited to claims and defenses of the answering
20 defendant(s).

21 Interrogatory No. 4 - This is one of many interrogatories for which no response
22 was made. The named defendants must describe in detail the actions the named
23 defendants undertook to locate all documents requested, including the identity of any
24 other individuals the named defendants requested assistance in the search.

25 Interrogatory No. 9 - The named defendants must describe in detail the
26 circumstances leading to the decision to invest or loan funds with the debtor.

27 Interrogatory No. 11 - The named defendants must respond with specificity to the
28 best of their recollection and provide the documents referenced in Request for

1 Production No. 4 or, if appropriate, provide a privilege log.

2 Interrogatory No. 13 - This interrogatory must amended or clarified by the
3 plaintiff.

4 Interrogatory No. 15 - An objection is made that the date of the document should
5 not be provided as the documents speak for themselves. In this case, there are instances
6 of undated documents and a postal strike which allegedly prevented delivery of mailed
7 documents. Thus, request for the date of receipt of the documents is relevant.

8 Interrogatory No. 19 - This interrogatory has no response. However, other
9 interrogatories which contain the same term “solicitation” have been objected to. This
10 creates confusion. The plaintiff may amend or clarify this interrogatory.

11 Request for Production Nos. 16 and 17 - These Requests for Production contain
12 an objection that they are vague and ambiguous. They are not. It is difficult to
13 understand how the requests could be made plainer. Should the named defendants
14 continue to object on the basis that the request is unduly burdensome, the objection must
15 set forth the specific basis for the objection and describe the burden imposed.

16 Request for Production No. 19 - The objection that this request duplicates the
17 documents sought in Request for Production No. 5 would have been well-founded if any
18 response had been provided to Request for Production No. 5. All documents sought in
19 Request for Production No. 5 and/or Request for Production No. 19 must be produced.

20 This Memorandum Decision resolves plaintiff's Motions to Compel Discovery
21 (ECF Nos. 254, 256 and 258) and orders will be entered accordingly.